

PUBLIC SAFETY AND HEALTH COMMITTEE REPORT
Wednesday, March 17, 2010 8:30 AM – 9:30 AM
Council Chambers, 140 West Pine Street, Missoula, Montana

Members Present: Dave Strohmaier, Pam Walzer, Roy Houseman, Bob Jaffe, Jon Wilkins, Lyn Hellegaard, Dick Haines, Renee Mitchell, Ed Childers.

Members Not Present:

Others Present: John Engen, Mark Muir, Loni Hutchison, Jim Nugent

I. ADMINISTRATIVE BUSINESS

1. Approve Minutes from [March 10, 2010](#). Minutes approved unanimously.

II. PUBLIC COMMENT

III. CONSENT AGENDA ITEMS

1. Confirm the reappointment of Raymond Murray to the Police Commission for a term commencing May 1, 2010 and ending April 30, 2013 ([memo](#)).—Regular Agenda (Mayor Engen) (Referred to committee: 03/15/10) **REMOVE FROM AGENDA**

MOTION: The committee recommends that the City Council confirm the reappointment of Raymond Murray to the Police Commission for a term commencing May 1, 2010 and ending April 30, 2013

Mayor Engen requested that the committee confirm the reappointment of Raymond Murray to the Police Commission.

Roy Houseman moved to confirm the reappointment. Motion approved unanimously.

IV. REGULAR AGENDA ITEMS

1. Consider an ordinance of the Missoula City Council amending Missoula Municipal Code Title 10 entitled "Vehicles and Traffic" by adding Chapter 56 entitled "Refusal to submit to alcohol and/or drug tests" and enacting sections 10.56.010 through 10.56.030 ([memo](#)).—Regular Agenda (Dave Strohmaier) (Referred to committee: 02/08/10) **REMOVE FROM AGENDA**

Ed Childers expressed concern about charging a person who refuses the test, but who is not legally intoxicated.

Mark Muir stated that if the breath test results are below the legal limit for alcohol, an officer can require a blood draw if the officer suspects intoxication by another substance.

Ed Childers is concerned about the invasiveness of the blood test.

Dave Strohmaier indicated that the blood test could be refused.

Mark Muir stated that if a person consents to a breath test, they are also consenting to a blood test. He said that a person can refuse the blood test after consenting to a breath test, but at that point the person would be changing their status from consent to refusal.

Dave Strohmaier discounted a rumor that the city will pay an individual who 'passes' the breath test.

Pam Walzer wants to focus on repeat offenders. She inquired about PD statistics for arrests for repeat offenders, and for breath test refusals by repeat offenders. She contrasted the impact of a \$300 fine on people of different income levels.

Dave Strohmaier mentioned the possible seizure of a repeat offender's vehicles.

Mark Muir stated that detailed studies regarding repeat offenders have not been conducted by the PD. He did state that repeat offenders tend to refuse the breath test at higher rates than a first offender. He thinks that all vehicles involved in a DUI should be towed, not just vehicles that are illegally parked as a deterrent.

Dick Haines does not think that taking into account a person's economic status should be considered when imposing a fine.

Ed Childers believes that the breath test and blood draw are two different issues.

Mark Muir stated that if a person appears physically impaired, but is below the legal limit for alcohol, the officer can proceed to a blood test under implied consent.

Renee Mitchell expressed concern about the issues regarding marijuana use, and the length of time the active ingredient is present in the blood, even if a person is not currently intoxicated on that substance.

Mark Muir stated that there are threshold levels for different substances. The Montana State Crime Lab technicians handle this.

Renee Mitchell asked about how many arrests are first time offenders versus repeat offenders. She also asked about clarification of DUI versus DUI per se.

Mark Muir stated that the DUI per se does not require a minimum 24 hour jail sentence.

Jim Nugent stated that by simply being in control of a motor vehicle, you are giving consent for testing of breath and blood. The per se DUI is intended for a person who submits to a test. After 5 years, a DUI is 'cleared' from consideration, and a DUI arrest after five years would be treated as a first offense. Jim also stated that a significant number of drivers do not have automobile insurance. Plea bargains are necessary due to the volume of DUI arrests, and the limited resources that prevent jury trials for all arrests.

Loni Hutchison with the DUI Task Force discussed the refusal issue. She feels that the \$300 fine for refusing a test makes a statement to the State Legislature. She mentioned an ordinance recently enacted in Darby. She stated that the DUI Task Force is in full support of the proposed ordinance.

Bob Jaffe pointed out the differences between Darby's ordinance and the proposed Missoula ordinance. He pointed to national statistics regarding DUI conviction rates. Conviction rates for people who refuse a test are actually higher.

Mark Muir pointed out that information about a prior DUI cannot be admitted into court during a trial for a subsequent offense.

Bob Jaffe is not sure that the proposed ordinance will actually impact the incidence of impaired driving.

Roy Houseman asked about statistics for rate of refusal on a first offense. He asked about the requirements for a blood test.

Mark Muir described the Drug Recognition Expert program that the Missoula PD employs. He also described the sheer number of drugs that a person can be under the influence of.

Roy mentioned the issue of medicinal marijuana, and what threshold needs to be met for DUI.

Jon Wilkins discussed the issues of rights. By refusing a test, a person is then charged with a criminal offense. He brought up the issue of Miranda rights and self incrimination.

Mark Muir stated that Miranda rights apply to the spoken word, but do not apply to the decision of being tested.

Jon Wilkins reiterated his point that a refusal makes that person a criminal.

Jim Nugent reminded the committee that the burden of proof is beyond a reasonable doubt. Prosecution has to rely on experts. Miranda is only about testimony and words, not physical evidence.

V. HELD AND ON-GOING AGENDA ITEMS

1. Police Department Update – Ongoing in Committee. (Mark Muir)
2. Fire Department Update – Ongoing in Committee (Mike Painter)
3. Health Department Update – Ongoing in Committee. (Ellen Leahy)
4. An [ordinance](#) amending Chapter 10.42 of the Missoula Municipal Code entitled "Bicycles" that would require minors to wear headgear while bicycling on streets, roadways, sidewalks, alleys and trails; and holding responsible the parent or guardian of a minor found to be in violation of this ordinance. ([Alternative Ordinance](#)) ([PS&H](#)) (Returned from Council floor: 2/26/07)
5. An [ordinance](#) amending Missoula Municipal Code Chapter 6.09 entitled "Missoula Cat Ordinance" section 6.09.010 through 6.09.090 to amend definitions, to limit the number of cats over the age of four months that a person, family, or household can harbor, keep, or maintain to five and to enact other general amendments. ([PS&H](#)) (Returned from Council floor: 01/12/09)
6. An [ordinance](#) amending Missoula Municipal Code Title 6 entitled "Animals" generally amending Chapter 6.04 entitled "Animals Running at Large" and Chapter 6.08 entitled "Dogs and Pet Shops," increasing the fee when an animal is impounded and establishing a fee for a boarding kennel license. ([PS&H](#)) (Returned from Council floor: 01/12/09)
7. Review Public Safety and Health referrals. ([memo](#)) – Regular Agenda (Marty Rehbein) (Referred to committee: 01/11/10)
8. Consider an ordinance of the Missoula City Council amending Missoula Municipal Code Title 10 entitled "Vehicles and Traffic" by adding Chapter 56 entitled "Refusal to submit to alcohol and/or drug tests" and enacting sections 10.56.010 through 10.56.030 ([memo](#)).—Regular Agenda (Dave Strohmaier) (Referred to committee: 02/08/10)

V. ADJOURNMENT

The meeting adjourned at 9:30 AM. Submitted by Gregg Schonbachler.